

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 203

SENATE BILL 1303

AN ACT

AMENDING SECTIONS 23-392, 23-1411 AND 38-1101, ARIZONA REVISED STATUTES;
RELATING TO PROBATION OFFICERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-392, Arizona Revised Statutes, is amended to
3 read:

4 23-392. Overtime compensation for certain law enforcement or
5 probation officer activities; option; definitions

6 A. Any person engaged in law enforcement activities shall be
7 compensated for each hour worked in excess of forty hours in one work week at
8 the option of such employer at the following rates:

9 1. One and one-half times the regular rate at which such person is
10 employed or one and one-half hours of compensatory time off for each hour
11 worked if by the person's job classification overtime compensation is
12 mandated by federal law.

13 2. If by the person's job classification federal law does not mandate
14 overtime compensation, the person shall receive the regular rate of pay or
15 compensatory leave on an hour for hour basis.

16 B. ANY PERSON ENGAGED IN PROBATION OFFICER ACTIVITIES SHALL BE
17 COMPENSATED FOR EACH HOUR WORKED IN EXCESS OF EIGHTY HOURS IN A TWO WEEK WORK
18 PERIOD AT THE OPTION OF SUCH EMPLOYER AT THE FOLLOWING RATES:

19 1. ONE AND ONE-HALF TIMES THE REGULAR RATE AT WHICH SUCH PERSON IS
20 EMPLOYED OR ONE AND ONE-HALF HOURS OF COMPENSATORY TIME OFF FOR EACH HOUR
21 WORKED IF BY THE PERSON'S JOB CLASSIFICATION OVERTIME COMPENSATION IS
22 MANDATED BY FEDERAL LAW.

23 2. IF BY THE PERSON'S JOB CLASSIFICATION FEDERAL LAW DOES NOT MANDATE
24 OVERTIME COMPENSATION, THE PERSON SHALL RECEIVE THE REGULAR RATE OF PAY OR
25 COMPENSATORY LEAVE ON AN HOUR FOR HOUR BASIS.

26 C. Paid leave may be considered hours worked for the purpose of
27 calculating overtime.

28 D. The director of the department of public safety may establish
29 alternate work periods, in accordance with federal law, for the purpose of
30 determining overtime compensation for those employees of the air rescue
31 section of the department of public safety.

32 E. Notwithstanding subsection ~~D~~ C of this section, an alternate work
33 period established by the director of the department of public safety for the
34 purpose of determining overtime compensation shall not exceed twenty-eight
35 days or ~~one hundred and~~ ONE HUNDRED sixty hours.

36 ~~B.~~ F. For the purposes of this section: ~~—a~~

37 1. "Person engaged in law enforcement activities":

38 (a) Means:

39 (i) A law enforcement officer as defined by section 38-1001. ~~—~~

40 (ii) A peace officer as defined by section 41-1701. ~~—or~~

41 (iii) Any security personnel responsible for controlling or
42 maintaining custody of inmates in correctional institutions maintained by ~~the~~
43 THIS state or a county, city or town.

2. "PROBATION OFFICER" INCLUDES A PROBATION OFFICER OR SURVEILLANCE OFFICER WHO IS EMPLOYED BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

Sec. 2. Section 23-1411, Arizona Revised Statutes, is amended to read:

23-1411. Public safety employee organizational rights;

definition

A. Public safety employees serving any city, town, county or fire district in this state have the right to join employee associations which comply with the laws of this state and have freedom to present proposals and testimony to the governing body of any city, town, county or fire district and their representatives. A person shall not be discharged, disciplined or discriminated against because of the exercise of these rights.

B. This section shall not be construed to compel or prohibit in any manner any employee wage and benefit negotiations.

C. FOR THE PURPOSES OF THIS SECTION, "PUBLIC SAFETY EMPLOYEE" INCLUDES A PROBATION OFFICER OR SURVEILLANCE OFFICER WHO IS EMPLOYED BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

Sec. 3. Section 38-1101, Arizona Revised Statutes, is amended to read:

38-1101. Law enforcement officers; probation officers; right to

representation; right to evidence on appeal; change

of hearing officer or administrative law judge:

definitions

A. If an employer interviews a law enforcement officer OR PROBATION OFFICER and the employer reasonably believes that the interview could result in dismissal, demotion or suspension, the law enforcement officer OR PROBATION OFFICER may request to have a representative of the officer present at no cost to the employer during the interview. The law enforcement officer OR PROBATION OFFICER shall select a representative who is available on reasonable notice so that the interview is not unreasonably delayed. The representative shall participate in the interview only as an observer. Unless agreed to by the employer, the representative shall be from the same agency and shall not be an attorney. The law enforcement officer OR PROBATION OFFICER shall be permitted reasonable breaks of limited duration during any interview for telephonic or in person consultation with others, including an attorney, who are immediately available.

B. Subsection A does not apply to an interview of a law enforcement officer OR PROBATION OFFICER that is:

1. In the normal course of duty, counseling or instruction or an informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other law enforcement officer OR PROBATION OFFICER.

2. Preliminary questioning to determine the scope of the allegations or if an investigation is necessary.

1 3. Conducted in the course of a criminal investigation.

2 4. Conducted in the course of a polygraph examination.

3 C. In any appeal of a disciplinary action by a law enforcement officer
4 OR PROBATION OFFICER, the parties shall exchange copies of all relevant
5 documents and a list of all witnesses pursuant to the following time periods
6 and requirements:

7 1. Within three business days after the employer's receipt of a
8 written request from the law enforcement officer OR PROBATION OFFICER for a
9 copy of the investigative file that is accompanied by a copy of the filed
10 notice of appeal, the employer shall provide a complete copy of the
11 investigative file as well as the names and home or work mailing addresses of
12 all persons interviewed during the course of the investigation.

13 2. No later than five business days before the appeal hearing, the
14 employer and the law enforcement officer OR PROBATION OFFICER shall exchange
15 copies of any documents that may be introduced at the hearing and that have
16 not previously been disclosed.

17 3. No later than five business days before the appeal hearing, the
18 employer and the law enforcement officer OR PROBATION OFFICER shall exchange
19 the names of all witnesses who may be called to testify. A witness may be
20 interviewed at the discretion of the witness. The parties shall not
21 interfere with any decision of a witness regarding whether to be interviewed.

22 D. It is unlawful for a person to disseminate information that is
23 disclosed pursuant to subsection C to any person other than the parties to
24 the appeal and their lawful representatives for purposes of the appeal of the
25 disciplinary action. This subsection does not prohibit the use of the
26 information in the hearing or disclosure pursuant to title 39, chapter 1,
27 article 2.

28 E. The employer or the law enforcement officer OR PROBATION OFFICER
29 may seek a determination by the hearing officer, administrative law judge or
30 appeals board hearing the appeal regarding any evidence that the employer or
31 the law enforcement officer OR PROBATION OFFICER believes should not be
32 disclosed pursuant to subsection C because the risk of harm involved in
33 disclosure outweighs any usefulness of the disclosure in the hearing. In
34 determining whether evidence will be disclosed, the hearing officer,
35 administrative law judge or appeals board may perform an in camera review of
36 the evidence and may disclose the material subject to any restriction on the
37 disclosure, including the closing of the hearing or the sealing of the
38 records, that the hearing officer, administrative law judge or appeals board
39 finds necessary under the circumstances.

40 F. In any appeal of a disciplinary action by a law enforcement officer
41 OR PROBATION OFFICER in which a single hearing officer or administrative law
42 judge has been appointed to conduct the appeal hearing, the law enforcement
43 officer OR PROBATION OFFICER or the employer may request a change of hearing
44 officer or administrative law judge. In cases before the office of
45 administrative hearings, on the first request of a party, the request shall

1 be granted. All other requests, including any subsequent requests in cases
2 before the office of administrative hearings, may be granted only on a
3 showing that a fair and impartial hearing cannot be obtained due to the
4 prejudice of the assigned hearing officer or administrative law judge. The
5 supervisor or supervising body of the hearing officer or administrative law
6 judge shall decide whether a showing of prejudice has been made.

7 G. A party who violates subsection C or D, unless the violation is
8 harmless, shall not be permitted to use that evidence at the hearing, except
9 on a showing of good cause. The hearing officer or administrative law judge,
10 on a showing of good cause, may grant the opposing party a continuance,
11 otherwise limit the use of the evidence or make such other order as may be
12 appropriate.

13 H. This section does not preempt agreements that supplant, revise or
14 otherwise alter the provisions of this section, including preexisting
15 agreements between the employer and the law enforcement officer OR PROBATION
16 OFFICER or the law enforcement officer's OR PROBATION OFFICER'S lawful
17 representative association.

18 I. For the purposes of this section:

19 1. "Appeal" means a hearing before a state or local merit board, a
20 civil service board, an administrative law judge or a hearing officer.

21 2. "Disciplinary action" means the dismissal or demotion or the
22 suspension for more than forty hours of a law enforcement officer OR
23 PROBATION OFFICER that is authorized by statute, charter or ordinance and
24 that is subject to a hearing or other procedure by a local merit board, a
25 civil service board, an administrative law judge or a hearing officer.

26 3. "Investigative file" means the law enforcement agency's complete
27 report and any attachments detailing the incidents leading to the
28 disciplinary action.

29 4. "Law enforcement officer" means:

30 (a) An individual, other than a probationary employee, who is
31 certified by the Arizona peace officer standards and training board. ~~or who~~
32 ~~is~~

33 (b) A detention officer or correction officer ~~and~~ who is employed by
34 this state or a political subdivision of this state other than a multi-county
35 water conservation district.

36 5. "PROBATION OFFICER" MEANS A PROBATION OFFICER OR SURVEILLANCE
37 OFFICER WHO IS EMPLOYED BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS
38 STATE.

APPROVED BY THE GOVERNOR APRIL 25, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2005.

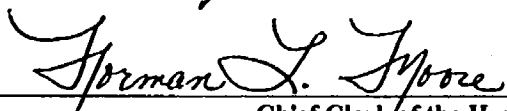
Passed the House April 14, 2005,

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting



Speaker of the House

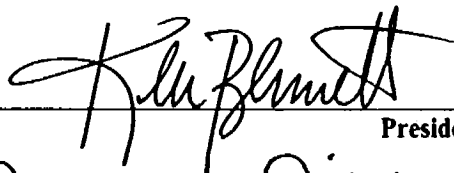


Chief Clerk of the House


Passed the Senate March 10, 20 05,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting



President of the Senate



Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

S.B. 1303

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate April 19, 2005,

by the following vote: 26 Ayes,

2 Nays, 2 Not Voting

Klu Bennett
President of the Senate
Charmine Ballington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

19th day of April, 2005

at 3:41 o'clock P. M.

Wendell H. Brown
Secretary to the Governor

Approved this 25 day of

April, 2005,

at 9:50 o'clock A. M.

J. R. Reynolds
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 25 day of April, 2005

at 4:33 o'clock P. M.

Janice K. Brewer
Secretary of State

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